Supreme Court, U.S.
FILED
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

SHERRY WHITE-BATTLE,

Petitioner,

V.

DEMOCRATIC PARTY OF VIRGINIA,

NORFOLK CITY DEMOCRATIC COMMITTEE,

GEORGE SCHAEFER,

AND

NORFOLK ELECTORAL BOARD,

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Sherry White-Battle
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Petitioner Pro se.

QUESTIONS PRESENTED

I. Did the Court of Appeals error in affirming the district court's finding that it had jurisdiction under Section 5 of the Voting Rights Act of 1965, as amended, to rule on the merits of this case?

II. Did the Court of Appeals error in affirming the district court's finding that the litigant's claims were made as an unsuccessful candidate and not as a voter?

III. Did the Court of Appeals error in affirming the district court's finding that the litigant's claims were moot under Rule 15 (a) of the Federal Rules Of Civil Procedure?

IV. Did the Court of Appeals error in affirming the district court's findings that the doctrine of administrative exhaustion applied to the facts of this case?

V. Did the Court of Appeals error in affirming the district court's finding that the litigant had proffered no evidence that would support a claim under Section 1983?

VI. Did the Court of Appeals error in affirming the district court's finding that the litigant had presented no case of "patent and fundamental unfairness" that "erode the democratic process?"

VII. Did the Court of Appeals error in affirming the district court's denial of the litigant's motion for leave to amend under Rule 15(a)?

VIII. Did the Court of Appeals error in affirming the district court's denial of the litigant right to discovery of her claims under Rule 26(b)(1) and (2) of the Federal Rules Of Civil Procedure?

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Petitioner, Sherry White-Battle("Battle") respectfully requests that a writ of certiorari be issued to review the order of the United State[illegible]urt of Appeals For the Fourth Circuit.

OPINION BELOW

The United States Court of Appeals For The Fourth Circuit denied the petition for appeal on June 21, 2005 (Record No. 05-1087). The opinion was not published. The United States District Court For the Eastern District of Virginia, Norfolk Division entered its Orders on June 24, 2004 and November 12, 2004 and November 16, 2004 (Case No. 03-897).

STATEMENT OF JURISDICTION

The Order of the United States Court of Appeals For the Fourth Circuit ("Court of Appeal") was entered on June 21, 2005.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent, part that:

"Congress shall make no law... abridging the freedom of speech..."

The Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part, that "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1 of the Fifteenth Amendment to the United States Constitution provides that:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

42 United States Code, Section 1983 provides, in pertinent parts, that:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, provides in pertinent part that: "...Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court."

Rule 15(a) of the Federal Rules of Civil Procedure provides that "...A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders."

Rule 26(b)(1) and (2) of the Federal Rules of Civil Procedure provides that: "... Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. By order or by local rule, the court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c)."

STATEMENT OF THE CASE

To fully appreciate the significance of the issues presented in this case, it is essential to consider the long procedural background.

On November 17, 2003, the petitioner, Sherry White-Battle ("Battle") attempted to file suit by lodging it in the Clerk's Office of the Norfolk Circuit Court to contest the election of the respondent, George Schaefer ("Schaefer") as the unsuccessful democratic candidate for the Clerk of the Norfolk Circuit Court, which election took place on November 4, 2003. Battle further sought declaratory relief, which was authorized by Virginia Code Section 24.2-807 et. seq. and Virginia Code Section 8.01-184.

Judge Everett A. Martin, Jr., ("Judge Martin") decided to hear the case.

Battle had strongly objected to Judge Martin hearing her case because she had then sued Judge Martin and other Judges of the Norfolk Circuit Court, and she was then suing Judge Martin and other judges of the same court in a civil rights suit in the Supreme Court of Virginia, Battle v. Poston, et al., Record No.032348. Over Battle's objections, Judge Martin presided and ruled on this case. In Battle's appeal to the Supreme Court of Virginia, Battle v. Democratic Party of Virginia, et al., Record No. Ch. 03-2074, the Supreme Court of Virginia failed to address, among other things, the issue of Judge Martin's qualifications to hear Battle's case. While this case Sherry D. Battle v. Poston et al., Record No. 03-1168, was still on appeal to this Court, Judge Martin ruled on Battle's case, notwithstanding Virginia's judicial canons and the Judges of the Norfolk Circuit Court's long-standing policy of recusing themselves from hearing Battle's cases.

In Battle's attempts to file suit in the Norfolk Circuit Court, she was required by the Order of Pre-Filing Injunction ("Order") entered on October 18, 2002 by the Norfolk Circuit Court to obtain leave from the court before further filings in the court and the courts in the State of Virginia.

The Order did not require Battle to send copies of her motion seeking leave to file suit to opposing counsels. However, the Order did require Battle to send the Order granting the motion opposing counsels. In accordance with the Order, Battle filed a motion seeking leave to file suit, attaching the Complaint she intended to file against the proposed defendants- respondents.

On November 20, 2003, Judge Martin of the Norfolk Circuit Court entered a Decree denying Battle's motion. In his Decree, Judge Martin noted that Battle had lodged with the Clerk's Office all the documents required by the Order. While this suit, the new suit, was never filed, Judge Martin used the same chancery case number of CH03-2074 of another case. With regard to Battle's request for Declaratory Judgment, Judge Martin stated that the election had been held and it was too late for Battle to claim that the winning candidate was improperly nominated. Decree, p. 1. He stated the government had expended considerable money and effort in conducting the election, and it would be a waste of the taxpayers' money.

Virginia Code, Section 24.2 -807 provides that "...The contest shall be initiated only be a written complaint of one or more of the unsuccessful candidates. The Complaint shall contain (i) objections to the eligibility of the contestee based on specific allegations, (iii) objections to the conducts or results of the election accompanied by specific allegations which, if proven to be true, would have a probable impact on the outcome of the election or both."

With respect to Schaefer's "eligibility," Judge Martin construed "eligibility" to refer only to the qualification to hold office prescribed in the Constitution of Virginia, Art. II, Sections 1, 5, and Virginia Code Section 15.2-1601. Decree, p.2. Judge Martin added the pleadings contained no specific allegations that Schaefer was ineligible. Decree p. 2.

With respect to "the conduct or results of the elections" Judge Martin concluded that Battle's pleadings